



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

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DECISION OF THE BOARD

Mailed and Filed: NOVEMBER 28, 2022

IN THE MATTER OF:

Appeal Board No. 625258

PRESENT: JUNE F. O'NEILL, MEMBER

The Department of Labor issued the initial determination holding the claimant eligible to receive benefits. The employer requested a hearing and objected contending that the claimant should be disqualified from receiving benefits because the claimant lost employment through misconduct in connection with that employment and that wages paid to the claimant by such employer should not count in determining whether the claimant files a valid original claim in the future.

The Administrative Law Judge held a telephone conference hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances by the claimant and on behalf of the employer. By decision filed July 29, 2022 (), the Administrative Law Judge overruled the employer's objection and sustained the initial determination.

The employer appealed the Judge's decision to the Appeal Board.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant was employed by a distribution center as an e-commerce associate for almost two years until February 1, 2022. The employer's policy, of which the claimant was aware, provides that an unscheduled absence or lateness is an occurrence and that an employee can be discharged if an employee has six unscheduled occurrences within a 12-month period. On October 13, 2021, he received a final warning because he had five occurrences. On January 29, the claimant was absent because of mental health

issues. The claimant was scheduled to start work on February 1, 2022 at 5:00 am. He overslept and reported to work at 6:06 am. Two alarms on the claimant's phone did not go off because the phone was disconnected from the charger. The employer discharged the claimant because his lateness on February 1, 2022 was his seventh occurrence.

OPINION: The credible evidence establishes that the claimant lost his employment because he reported late to work on February 1, 2022. We are not persuaded by his contention that he overslept because his alarms did not activate, as he was warned about his attendance. An employer has the right to expect regular attendance from its employees. As he was aware of the employer's policy and in view of his warning, he knew or should have known that further attendance issues could jeopardize his employment. Accordingly, we conclude that the claimant's final tardiness rises to the level of misconduct and that his employment ended under disqualifying circumstances.

DECISION: The decision of the Administrative Law Judge is reversed.

The employer's objection, that the claimant should be disqualified from receiving benefits because the claimant lost employment through misconduct in connection with that employment and that wages paid to the claimant by such employer should not count in determining whether the claimant files a valid original claim in the future, is sustained, effective February 2, 2022.

The initial determination, holding the claimant eligible to receive benefits, is overruled.

The claimant is denied benefits with respect to the issues decided herein.

JUNE F. O'NEILL, MEMBER